UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

UNITED STEEL, PAPER AND FORESTRY
RUBBER, MANUFACTURING, ENERGY,
ALLIED INDUSTRIAL AND SERVICE
WORKERS INTERNATIONAL UNION, AFL-CIO,
CLC and its LOCAL 53G

and 06–CB–198329

WORLD KITCHEN, LLC

UNITED STEEL, PAPER AND FORESTRY
RUBBER, MANUFACTURING, ENERGY,
ALLIED INDUSTRIAL AND SERVICE
WORKERS INTERNATIONAL UNION, LOCAL
53G, AFL-CIO, CLC

and 06–CB–199021

WORLD KITCHEN, LLC

David Shepley, Esq.,
for the General Counsel.
Robert Bernstein, Esq.,
for the Charging Party.
Bruce Fickman, Esq. and *Amanda Fisher, Esq.,*
for the Respondent International Union.
Michael Healey, Esq.,
for the Respondent Local Union.

DECISION

STATEMENT OF THE CASE

THOMAS M. RANDAZZO, Administrative Law Judge. This case was tried in Pittsburgh, Pennsylvania, on February 5, 2018. World Kitchen (the Charging Party or Employer), filed the instant charges in Case 06−CB−198329 and Case 06−CB−199021 on May 8, 2017.[1] The General Counsel issued the Order consolidating cases, consolidated complaint and notice of hearing (consolidated complaint) on August 31, 2017, alleging that the United Steel,

[1] All dates are in 2016 unless otherwise indicated.

Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL−CIO, CLC (Respondent International Union) and its Local 53G and United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, Local 53G (Respondent Local Union) violated Section 8(b)(3) of the National Labor Relations Act (the Act) by failing to execute a written contract embodying the agreement reached on the terms and conditions of employment for the unit employees.[2] In an answer to the consolidated complaint, the Respondents denied that they violated the Act as alleged.

On the entire record,[3] including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel, the Employer, the Respondent International Union, and the Respondent Local Union, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Employer, a corporation with an office and place of business in Charleroi, Pennsylvania, the Employer's facility, has been engaged in the manufacture and nonretail sale of Pyrex glassware. Annually, the Employer, in conducting its operations, sells and ships from its Charleroi, Pennsylvania facility goods valued in excess of $50,000 directly to points outside the Commonwealth of Pennsylvania.

The Respondents admit, and I find, that the Employer has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. The Respondents also admit, and I find, that the International Union and the Local Union have been labor organizations within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Facts

1. Background

The Employer manufactures Pyrex glassware such as baking dishes and storage vessels for snap ware (glassware with plastic lids) at its Charleroi, Pennsylvania facility. That facility was formerly Corning Glass Works. (Tr. 169.) The International Union, the Local Union, and the Employer have had been parties to a three-party collective-bargaining agreement for a number of years. (Tr. 28.) That long-standing collective-bargaining relationship has been embodied in successive collective-bargaining agreements, the most recent of which was effective from June 9,

[2] The General Counsel amended complaint par. 8(a) at trial to allege that on or about November 2, 2016 (rather than November 3, 2016), the Employer and Respondents reached complete agreement on terms and conditions of employment of the Unit to be incorporated in a collective-bargaining agreement. (Tr. 219.)

[3] Abbreviations used in this decision are as follows: "Tr." for transcript; "GC Exh." for General Counsel's Exhibit; "RI Exh." for Respondent International Union's Exhibit; "RL Exh." for Respondent Local Union's Exhibit; "GC Br." for the General Counsel's Brief; "ER Br." for the Employer's Brief; "RI Br." for Respondent International's Brief; and "RL Br." for Respondent Local's Brief.

2011, to March 1, 2016, as extended by agreement of the parties through and including February 28, 2017. The Respondent Unions have been recognized as the collective-bargaining representative of the following appropriate unit of employees:

> All production and maintenance employees including checkers, shippers and truck drivers employed by the Employer at its Charleroi, Pennsylvania, facility; excluding office clerical employees and guards, laboratory workers, technical and engineering employees, and supervisors as defined in the Act. (GC Exh. 1(e)).

The parties to the 2011−2016 CBA were the Employer, International Union, and Local Union 53G (USW 53G). The reference to "Union" in that agreement pertained to both the International and Local Union 53G, and representatives from the Employer and both Unions signed the agreement. (Jt. Exh. 1.)[4]

With regard to the collective-bargaining history of the parties, Phil Ornut, a local union president from the 1980 to 1993, testified that when he was hired in 1969 the union that represented the Employer's employees was the United Glass and Ceramic Workers of North America, AFL−CIO, CLC (the UGCW Union). (Tr. 143−144.) In 1982, the United Glass and Ceramic Workers (UGCW) merged with the Aluminum Brick & Clay Workers International Union, AFL−CIO (the ABC Union). (Tr. 145.) The merged organizations formed an unincorporated association known as the Aluminum, Brick & Glass Workers International Union, AFL−CIO, CLC (the ABG Union). (RL Exh. 1, p. 2.) Ornut testified that since the UGCW Local Union was a Glass Local, it had a specific designation of Glass Local (a "G Local"), so there were protections for it during the talks for merger. (Tr. 145.) The Merger Agreement between the UGCW and the ABC provided that one such protection pertained to the method of ratification of contracts. In that connection, article 20(b) of the merger agreement provided: "The method of negotiation and ratification of labor agreements shall continue as heretofore." (RL Exh.1; Tr. 146.) Historically, the Local Union negotiating committee consisted of the Industrial Relations Committee, which was the president, vice president, and the secretary-treasurer. For ratification of contracts, the Committee had to tentatively agree to the contract at the table and there was a notice posted for contract explanation meetings. The members were then given a contract summary, and 2 to 3 days later the Local would post where the vote was to be held. (Tr. 146−147.)

The ABG Constitution adopted by the International Convention in 1993 provides in article XV, section 1 that: "The International Union shall negotiate all Labor Agreements on behalf of the Local Unions, and such agreements shall be subject to membership ratification." RL Exh. 2;

[4] Pursuant to the stipulation of the parties, in the 2000−2003 collective-bargaining agreement between the Employer and the United Steelworkers of America (ABG Division) AFL−CIO−CLC and Local No. 53G, the word "Union" was defined to mean the United Steelworkers of America (ABG Division) AFL−CIO−CLC and its Local No. 53G, and that CBA was signed by representatives of both the United Steelworkers of America and Local 53G. (Jt. Exh. 1.) The parties to the 2003−2006 collective-bargaining agreement were WKI Holding Company Inc. and the United Steelworkers of America (ABG Division) AFL−CIO−CLC and Local No. 53G. (Jt. Exh. 1.) The 2003−2006 CBA was also signed by representatives of both the International and the Local union. The parties to the 2006−2011 CBA were World Kitchen, LLC and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (ABG Division) AFL−CIO, CLC and Local Union 53G (USW 53G). That agreement was likewise signed by representatives of both unions. (Jt. Exh. 1.)

Tr. 148..) Ornut, who worked as the ABG International Union Staff Representative from 1993 to 2014, testified that in 1996-1997, the ABG merged with the United Steelworkers and certain practices and procedures of the ABG were carried forward. (Tr. 149.) In that regard, the Merger Agreement between the ABG and the United Steelworkers provided in article IV, section B-3 that "the procedure for ratification of agreements with employers shall be in accordance with and governed by the procedures incorporated in Article XV of the ABG Constitution…." (RL Exh. 3; Tr. 150.) The USW Merger Agreement Attachment 2 provides that "USWA agrees to Section 20 of the 1982 merger agreement between Aluminum Brick and Clay Workers and United Glass and Ceramic Workers." (RL Exh. 3; Tr. 151.)

Ornut testified that those who were under the USCW wanted to carry forward certain provisions, protections, and safeguards into the merger, one of which was the way they negotiated and ratified contracts and the protection of the Glass Locals' treasuries. (Tr. 152.) One such provision specifically carried forward was the membership ratification of tentative agreements. (Tr. 153.) According to Ornut, in order to have ratification of an agreement, a majority of the members (50 percent plus 1) had to vote in favor of the contract. That requirement was carried forward in the merger with the USW. (Tr. 153.) Ornut also testified that in the history of the plant, there was previously a tie vote on ratification for a contract. In that case, it was not considered ratification of the contract and the parties continued to bargain. (Tr. 154.) Ornut further testified that an International representative cannot sign off on a contract without the membership ratification for a Glass Local.

Thomas Seal, the Local Union President, testified that he had been employed at the facility for 34 years. (Tr. 170.) Even though he was elected as Local Union president in May 2015, he previously served in that position under the ABG union from 1994 to 1995. (Tr. 170.) Seal testified that the collective-bargaining agreement was a tri-party or three-party Agreement between the Employer, the International, and the Local. (Tr. 172.) He testified that historically, the process for ratification of tentative collective-bargaining agreements consisted of all three parties having to be in agreement on the tentative agreement. Then, the Local would hold informational meetings for the employees, create draft summaries of the tentative agreement, and then have a vote to ratify it. (Tr. 172−173.)

2. In January 2016 the parties commenced negotiations for a successor collective-bargaining agreement at the Charleroi, Pennsylvania plant

In January 2016, the parties started negotiations for a successor collective-bargaining agreement. The negotiations on the contract at issue consisted of 43 individual bargaining sessions between January 2016 and November 2, 2016. Attorney Andrew Goldberg, Esq., the Employer's labor counsel, served as the lead negotiator for the Employer. The Employer's bargaining committee consisted of: John Hartman (vice president of Glass Operations); Louis Karmsimon (vice president of human resources); John Lacovic (senior plant director for the Charloroi plant); Donald Goode (Charleroi plant senior manager for human resources); Cindy Goetz (human resources representative); Jennifer Defreeuw (corporate office senior benefits); and Brian Schultz (benefits/finance). (Tr. 23−25.) Representatives from both the International Union and the Local Union participated in the negotiations for the Respondents. International Union Representative Jim Watt served as the lead negotiator for both the International and the Local Union, and the Union bargaining committee included Robert McAuliffe (International District 10 director), John

Ratica (International Sub-District director for District 10), Tom Seal (Local 53G president), Sean Delaney (Local vice president), and Heather Price (IRC Committee).[5] (Tr. 26−27.)

3. In June and August 2016, tentative agreements were reached by the parties but were not ratified by the employees, and the parties returned to the bargaining table to continue bargaining for a successor collective-bargaining agreement

Seal testified that during the months of negotiations the Unions presented proposed labor agreements to the membership for ratification on two occasions, but they were rejected and the parties continued to bargain. The record does not reflect the first vote that was rejected by the employees, but it does establish there was a proposal in August 2016 that was subsequently voted down. The record establishes that in June 2016, the parties appeared to have reached a tentative agreement with International representatives Watt and Ratica signing off on it, and with Local representatives Seal and Delaney also signing off on it. That tentative agreement, however, did not result in a signed collective-bargaining agreement. Goldberg testified that even though the tentative agreement was signed by Seal and Delaney, it was not signed by the other Local Union bargaining committee members. (Tr. 80−81.) Goldberg testified that Local Union Representative Dan Niccolai informed the Employer and International that any agreement with the Local required the signatures of all five of the Local representatives on the bargaining committee in order for there to be a tentative agreement, and that Seal and Delaney alone did not have the authority to enter into anything binding on behalf of the Local. (Tr. 38−39; 81−82.) The Local Union bargaining committee thus informed Goldberg that they did not have a tentative agreement. (Tr. 82.)

In an email dated July 25, 2016, Watt informed Goldberg that: "After consulting with the membership, the Union has concluded that member ratification of the Company's current offer is extremely unlikely," and it was requested that the Company "return to the negotiating table for further discussions with the aim of reaching an agreement." (RI Exh. 1; Tr. 76−77.) In an email response to Watt dated August 3, 2016, Goldberg stated:

> As you may recall, we reached a Tentative Agreement with the International and Local 53G. The President and Vice President of the Local Union approved of the Tentative Agreement in writing. This Tentative Agreement was reached after very thorough good faith bargaining. We were assured by the International and the Local Union that there would be no requests for anything more. Consistent with that assurance, the Company has no more movement left. The Tentative Agreement represents the Last, Best Final Offer of the Company. We have concluded negotiations. We decline the request to meet. We request that the Union present the Last, Best Final Offer for a ratification vote and that the Tentative Agreement be supported as promised.
> (RI Exh. 1; Tr. 76−77.)

[5] The Industrial Relations Committee (IRC) is a joint union-management industrial relations committee composed of several persons from both management and Local 53G. The union members serve as Local 53G's governing body, and the IRC engages in various aspects of labor relations at the facility by meeting on issues that arise at the plant. (Tr. 30–31; 97–98; 116; 171.)

On August 9, 2016, the Union provided the Employer with a response to its distribution of documents to employees concerning the tentative collective-bargaining agreement. (RI Exh. 2; Tr. 78.) That response consisted of the Union's "summary" of the company's Last, Best and Final Offer" which included several examples of the potential financial benefits or cost to the members. (RI Exh. 2.) On August 12, 2016, in an email from Goldberg to International Representative Witherell, Goldberg expressed his concerns that some of the items in the Union's summary to employees regarding the ratification vote would result in the employees voting against ratification. In that email Goldberg stated:

> I think this is an extremely complicated and confusing piece to put in a mailer. This type of information needs a lot of handholding and explanation. In addition, the summary sheet does not show total net extra dollars paid to employees over the life of the contract. Instead, the document makes it appear that the end result is a loss in the later years for many people. That is going to drive people to vote no. I thought the objective was to have a contract ratified. We are of concern that your document will serve an opposite purpose.
> (RI Exh. 2)

The ratification of that last, best, and final offer referenced in Goldberg's email was voted down by the Local bargaining unit members in August 2016, and the parties thereafter continued bargaining. (RL Exh. 5.)[6]

Watt sent Goldberg a letter dated August 23, 2016, in which Watt requested that the Employer resume negotiations during the week of September 6–9, 2016, and it "made several assertions regarding the Union's behavior in negotiations versus the Company's behavior. . . ." (RI Exh. 3 referencing Watt's August 23, 2016 letter.) In a letter dated September 7, 2016, Goldberg responded to Watt's August 23, 2016 letter, stating that the negotiations that occurred before September 7 had ultimately produced a tentative agreement and the Local Union president and vice president signed that agreement and committed to support that agreement. (RI Exh. 3; Tr. 80–81.) In Goldberg's September 7 letter, he stated:

> The negotiations ultimately produced a Tentative Agreement. The Local Union President and Vice-President signed confirmation of the Tentative Agreement and their commitment to support the Tentative Agreement. You participated in the negotiation sessions that reached the Agreement and personally sent me signed confirmations. You personally heard both Tom Seal and Shawn Delaini [Sic] confirm to Lou Kartsimas and myself that they would support the Tentative Agreement. Seal, Delani [Sic] and the International Union promised World Kitchen that the Tentative Agreement represented the last requests from the Union side and that there would be no more requests.

[6] Seal testified that there were "two prior votes to ratify" the tentative agreements which were "overwhelmingly rejected." (Tr. 190; 195–196) The record establishes that one unsuccessful ratification vote occurred in August 2016. However, in the preceding months of June or July, when the Local determined that no tentative agreement was reached because not all the members of the Local IRC had signed off on it, the record does not support that the tentative agreement actually went to a ratification vote at that time. In any event, Seal credibly testified that after the ratification was rejected in August, the parties returned to the bargaining table.

> Seal and Delaini [Sic] broke their promise and actively worked against obtaining a ratification of the Tentative Agreement. The International Union through yourself and Rob Witherell also attacked the Tentative Agreement by providing misleading and incomplete information about the 30% medial premium contribution for those not qualified under the wellness program as it relates to the Affordable Care Act. We advised of the financial risks the Union would create by misleading the bargaining unit members. The Union was clearly more interested in defeating the Tentative Agreement than in obtaining a contract.
>
> Further to that conclusion, in a letter you sent dated August 9, 2016, you also rejected the fact that the parties had reached a tentative agreement. Thus, both the Local and International Union, through your letter and actions, have gone back on their words. We are quite concerned as to whether the Union actually has put the best interest of our valued employees ahead of the personal agendas of the Union Committee members. Based on the conduct in which the Union has engaged, we are doubtful that the Union is truly interested in reaching an agreement satisfactory to both parties.
>
> Nevertheless, the Company is willing to provide the Union the opportunity to make a proposal….
> (RI Exh. 3)

4. In September 2016 the Parties continued negotiations for a successor collective-bargaining agreement

The parties continued bargaining in September 2016, and the contract was extended by agreement of the parties so that the expiration date was February 28, 2017. (Tr. 28.) In an email dated October 5, 2016, Goldberg discussed the upcoming bargaining sessions scheduled for November 1–3, 2016. In that email, Goldberg expressed his desire to complete the agreement so that the Employer could install the Decorating Line in the Charleroi Facility. In that connection, Goldberg stated in his email:

> Please keep in mind Jon's comment about the need to finalize and ratify so we can move forward with the new decorating machine. We desire to put the machine in Charleroi, but time is of the essence. We prefer to have certainty before installing any new equipment. If we do not have certainty and we need to start producing, we will explore other sites. Thus, we suggest that both parties work hard to come to an [sic] recommended Tentative agreement by COB on the 2nd.
> (RI Exh. 4, Tr. 83.)

5. The Parties' resumed bargaining and a tentative agreement was reached on November 2, 2016

The parties resumed bargaining in September 2016, and ultimately, the parties signed off on a tentative agreement on November 2, 2016, which was to be submitted to the Union membership for ratification. (GC Exh. 2; Tr. 29.) Even though there were several pages of that

agreement that the Employer's representatives inadvertently did not sign, it is undisputed that all aspects of that tentative contract were agreed to by the Employer and its representatives. (Tr. 31–32; 87.) While the parties met on November 3, 2016, to conclude miscellaneous administrative matters, Goldberg sent a copy of the signed pages to Watt on November 7, 2016. (GC Exh. 3; Tr. 35–37.) On November 3, 2016, Goldberg also met with International Representative Witherell to prepare a summary of the tentative agreement to show the membership at the ratification vote. (Tr. 99.)

Seal testified that in order to "fortify a tentative agreement," he distributed a one page diagram entitled "Charleroi Decorating Expansion Overview" that the new line would add "35–40 new positions" and "$2.25M investment." (RL Exh. 4; Tr. 173–174.) Seal testified that Jon Hartman, Employer vice president of glass operations, gave that document to both the Local and the International, stating that if the contract was ratified "we would get the expansion." (Tr. 173–174.) Seal showed that document to the membership at the Explanation Meeting. (Tr. 174.) Seal also provided members at the Explanation Meeting with a summary dated November 2, 2016, from the Local 53G Negotiating Committee. On the cover page of that 5-page document, the Local Committee stated that: "After nearly a year of difficult negotiations, your Local 53G Negotiating Committee and the USW have reached a Tentative Agreement with the Company. Although it is not the contract we had hoped for, we believe it is the best deal we could get." (RL Exh. 5.) That summary also stated in part that "[c]ompared to the Company offer we voted down in August, you will notice this Tentative agreement does not include the 1.5% wage increase for 2016 or the additional 1% contribution into our 401(k) accounts, but we believe the improvements we have made in healthcare more than make up for those changes." (RL Exh. 5.)

Seal also provided the employees notice for the membership contract meetings on November 7 and 8, 2016 (RL Exh. 6.) and notice that the contract ratification vote would be on November 10, 2016. (RL Exh. 7.) That Notice informed employees that "[t]he Local Union will be voting on the Tentative Agreement on a successor contract. The voting membership will be to accept or reject the Tentative Agreement on a successor contract." (RL Exh. 7.) In an email dated November 7, 2016, Goldberg sent the tentative agreement, signed by the Employer's representatives, to Watt. (GC Exh. 3; Tr. 34.) The members of the Local Union negotiating committee endorsed all the tentative agreements that constituted the proposed contract. (Tr. 191.)

6. The Local Union's ratification vote on November 10, 2016, resulted in a tie, and the International Union representatives informed the Employer that a tie-vote was ratification of the contract by the unit employees

It is not in dispute that the International, Local, and Employer all knew on November 10, 2016, that the Local Union conducted a ratification vote from 5 a.m. to 5 p.m. Seal left at 3:30 p.m. that day for personal reasons, and he asked Watt to let him know how the vote came out. (Tr. 180.) The vote resulted in a tie—108 for ratification and 108 against it. After the count, Watt called Seal and told him it was a tie vote and "we have a contract, and I will talk to you later." (Tr. 181.) There is no evidence that, at that time, Seal objected to or disputed Watt's determination that ratification was achieved, and he did not inform any Employer representatives that ratification did not occur. In the meantime, Donald Good, Respondent's senior manager of human resources at the Charleroi plant, testified that Union Negotiating Member Heather Price called him that evening and told him it was a tie vote. (Tr. 110.) When Good asked her what that meant, she said

they talked to the International Union representative, and "we have a contract." (Tr. 110–111.) Watt also called Good that evening around 6:30 p.m., and left a voice mail message stating "we have a contract." (Tr. 111.)

Watt reports to International District 10 Director McAuliffe. He testified that immediately after the vote on November 10, he called McAuliffe and told him it was a tie vote. McAuliffe said he would call Watt back, and he eventually did, telling him that a tie vote constituted a ratified contract. (Tr. 125–126; 129; 159–160.) Watt also informed Heather Price what McAuliffe said, and he admitted calling Don Good and telling him that they had a contract. (Tr. 128–129; 160.) It is undisputed that Seal was at the vote for some of the voting period, but he was not at the tally, and no one on the Industrial Relations Committee spoke up at that time to state that they did not have a contract. (Tr. 163–164.) McAuliffe admitted that he informed Watt that a tie vote was ratification because on that day, he called the International Union headquarters and spoke to Bob Roots, the Director of OBM Services for the International, who was responsible for interpreting the constitutions and by laws for all the local unions, and Roots informed him that a "tie vote is not a rejection, it is a ratification." (Tr. 208–209.) McAuliffe testified, however, that he neglected to inform Root that it was a three-party contract and a Glass Local Union. (Tr. 209.)

Watt also called Goldberg that evening and informed him that the tie vote was considered to be ratification, and he stated that they had a contract. (Tr. 39.) On that date, Goldberg stated in an email to the management team:

> We are all pleased to report that the bargaining committee ratified the tentative agreement today. It was a tie vote 108-108. However, we have been assured by the USW that under their Constitution and by-laws a tie is a ratification. (GC Exh. 4; Tr. 39-40)

7. On November 12, 2016, Seal informed the Employer that there was a problem with the vote and there was no agreement

Two days after the vote, on November 12, 2016, Seal received a phone call from Jon Hartman who told him "I hear we have a contact." (Tr. 182.) In response, Seal said, "Well, Jon, we have a problem with the vote . . . I have to look into it, it's probably going to have to be revoted, we don't have an agreement." (Tr. 182.) Seal returned to work on Monday, November 14, where he saw Plant Director John Lackovic. Seal told Lackovic that "the Tentative Agreement wasn't ratified, . . . we have a tie vote." (Tr. 183.) Seal further informed him "Well, I am telling you right now, we have to revote this,…looking at the calendar, I am thinking December 1st." (Tr. 183.) On November 16, Seal met with Senior HR Manager Don Good regarding an unrelated grievance, and he told Good "we have got a tie vote here, we are going to have to revote this contract." (Tr. 184.) At that time, Good told Seal that he was told by Heather Price that there was a contract, but Seal informed him that she was not authorized to speak for the Local, and that she was at the vote as an observer. (Tr. 184.) Good acknowledged that a few days after the vote, Seal informed him that a tie vote did not ratify the contract. (Tr. 117–118.)

Seal eventually gave the International notice that there was no agreement. In a November 14, 2016 email, Ratica informed Watt that he received a message from Seal "stating that Local 53G will NOT accept the contract and that the International does not have the right to ratify the

contract," and that the Local Union was "demanding a revote, with or without [Watt]." (RI Exh. 7.) In a November 16 email from Seal to McAuliffe (and a copy to Ratica and Watt), after he found out that the International Union was not going to let the Local have a revote, Seal talked about the Glass Merger Agreement and the fact that the International Union did not have the right to ratify the contact. In that connection, Seal stated:

> The Glass Merger Agreement is clear. The labor agreement for Local 53G is subject to Membership ratification [and] nothing in the USW constitution shall be deemed to restrict the right of local glass union to take contract ratification votes and/or strike votes of local membership.
> In case of a tie vote, another ratification vote shall be held. This is consistent with the Constitution where a tie vote occurs for any of the candidates for a particular office, another vote shall be held.
> I am not going to put myself and/or this Local Union in a position where misrepresentation and charges may be filed against the Local and it's representatives. This is common-sense a revote must be held in a tie ratification vote.
> Local 53G is preparing for a Re-vote on Thursday, December 1, 2016.
> (RL Exh.8; Tr. 185–186.)

Goldberg also acknowledged that by November 16, 2016, the Employer was aware that the Local was claiming, and that Seal had in fact informed the plant manager, that there was no contract because the ratification vote was a tie. (Tr. 94; 100.)

8. On or about November 14–16, 2016, the International informed both the Employer and the Local Union that the tentative agreement was ratified and that it was going to uphold the contract and sign it

Despite Seal's assertions that a tie vote did not result in ratification of the Tentative Agreement, the International Union and the Employer insisted that the collective-bargaining agreement was ratified. According to Goldberg, from November 10, 2016, through January 2017, he was told by the International Union that there was a contract, and that the Local Union was "wrong." (Tr. 103.) Goldberg testified that between November 14 and 16, 2016, Ratica conveyed to him through a telephone conversation and emails that "the International was going to uphold the contract, and that they were going to ultimately sign it." (Tr. 49.)

According to Goldberg, the International also expressed, through emails and letters from Kilbert to Seal, that the tie vote ratified the tentative agreement and that there was no basis for Seal to have a re-vote on ratification. In an email dated November 16, 2016 (at 6:31 a.m.), from Goldberg to Ratica (with a copy to McAuliffe, Hartman, and Kartsimas), Goldberg stated that Seal was telling Plant management that he had not heard from the International and that he is "proceeding with a second vote on December 1." (GC Exh. 5; Tr. 40.) Goldberg then stated:

> Can you please direct him in writing not to do so and that we have a valid ratification. Also, I have a very skittish client right now. Can you reassure us that it is the position of the International that we have a contract? From our end, we are going to be signing signature pages and sending a clean CBA document for review

> and signature on the Union's part. We need to get something in writing so we can move forward on the decorating machine. (GC Exh. 5; Tr. 40.)

From Goldberg's email came a chain of subsequent email exchanges on November 16, 2016. (GC Exh. 6.) Goldberg's email above was forwarded by McAuliffe to Nathan Kilbert, the International Union's Assistant General Counsel,[7] at 8:21 a.m. that day, wherein he asked Kilbert to let him know when the International will send a letter to Seal. (GC Exh. 6; Tr. 43.) McAuliffe sent Goldberg a copy of the letter that Kilbert was going to send to Seal, in which Kilbert informed Seal that the International is upholding the CBA and refuting the position of the Local that there was no contract. Goldberg then informed McAuliffe that he will not share the letter with his management team until it is sent to Seal, and McAuliffe then asked Goldberg to let him know when he could share the letter. (GC Exh. 6; Tr. 42–46.)

In an email from McAuliffe to Goldberg on November 16, at 10:40 a.m., McAuliffe attached a November 16 letter from Kilbert to Seal that would be sent via email and certified mail to Seal that day. (GC Exh. 7.) In that letter, Kilbert informed Seal that he was "mistaken in contending that the USWA-ABC Merger Agreement requires a re-vote in the event of a tie." Id. Kilbert stated that the Merger Agreement provided that "the procedure for ratification of agreements with employers shall be in accordance with and governed by the procedures incorporated in Article XV of the ABG Constitution." Kilbert further stated that the USWA was committed to abide by Section 20 of the 1982 agreement that created the ABG, and Section 20 provided that "the method of ratification of labor agreements shall continue as heretofore." Id. In that letter, Kilbert informed Seal that since there was nothing in Article XV of the ABG Constitution setting forth "a method of resolving a tie vote," and since the Merger Agreement did not require a re-vote in the event of a tie," McAuliffe "made the determination to regard the agreement as ratified and to inform the membership and the employer of such ratification." Id.

In a November 22, 2016 email to Goldberg, McAuliffe assured him that the International's intention was to "maintain the ratification of the collective bargaining agreement." (GC Exh. 8.) McAuliffe attached a letter (on USW stationary) dated November 22, 2016, from Kilbert to Seal. (GC Exh. 8; Tr. 96.) In that letter, Kilbert informed Seal that he was in receipt of Seal's November 17 letter, in which he asserted that Seal assumed, without basis, that "a tied ratification vote cannot be resolved in any way other than a re-vote," and that Kilbert believed "one method of resolving tied votes [is] by taking into account the express preferences of the Local Union's Negotiating Committee and its President, who had recommended the agreement, rather than holding a re-vote that might well have come out tied a second time." Id. Kilbert went on to advise Seal that since the Local Union bargaining committee "recommended the agreement" for ratification, the tie vote was resolved by the "expressed preferences" of the Local bargaining committee and its president (which was Seal), so "we have a contract ratified by the membership." Kilbert stated that "[t]his is a reasonable interpretation of the ratification requirement, with which a court will not interfere." Id. Kilbert also related that, as his November 16 letter explained, "there is no practice of Local 53G regarding tie ratification votes, so the provision in Section 20 calling for the continuation of established ratification methods cannot be applicable." Id. According to Kilbert, Seal's letter "ignores the critical point that it is far too late to raise these arguments," and that he (Seal) "made

[7] The Parties stipulated that Kilbert is the International Union's attorney. (Tr. 46.)

the choice not to be present at the tally of ballots," and he "never suggested that a re-vote might be required that evening [of the vote]." Id.

In regard to the International Union Lawyer's letter asserting "the Local [is] wrong," Goldberg testified that Ratica commented "we want that decorating line, we want that decorating line, we are going to back you, we are going to back you. There is a contract, the Local is wrong." (Tr. 103.) Goldberg testified that on November 2 he believed they had an agreement and he considered negotiations "to be done." (Tr. 103.) In the meantime, on December 8, Seal met with Don Good to review the raises under the alleged new collective-bargaining agreement to make sure there were no mistakes in the wage rates. However, Seal refused to sign it because he believed they did not have a ratified contract. (Tr. 188; RL Exh. 11.)

9. On December 12, 2016, the Employer sent the International a copy of the Tentative Agreement executed by the Employer representatives, and Watt informed the Employer he would have it signed

In an email dated December 12, 2016, Goldberg provided Watt a "clean CBA for Charleroi, along with a signature page from the Company" for the International's review. (GC Exh. 9, 10, and 11; Tr. 51.) On December 12, 2016, Goldberg received a voicemail message from Watt informing him that he had a signed collective-bargaining agreement and he was going to have it processed. (Tr. 54.) Goldberg testified that he believed the parties had an agreement and the Local and International Unions should have signed it. In that connection, he testified:

> So, when November 2nd came, everybody signed. We were done. And, did I know they were going to ratify it? Yeah, because they do that all the time. But, I didn't agree with what the ratification meant, that's their processes. So, in our mind we had a full signed, executed agreement. It had to be finalized, because it was in red line format, and so it's tentative until we put it into that final contract. But it's an agreement. There is nothing more to discuss…. I considered the contract to be signed as a part of our commitment with respect to that decorating line…so that we can show, if we got to go to the bank for loans, if we got to go to the city or state like we did in New York, to say, 'We need more funds, can you help us develop a site, or to add more people, look, we have a ratified contract, we have a signed contract, we have no labor disputes,' but I never got that from them. (Tr. 104-105)

10. On December 20, 2016, the International informed the Employer that the Local was placed under administratorship and it was going to sign the contract on behalf of the Local, and on December 22, 2016, the Local informed the Employer that the contract had not been ratified

In a letter dated December 15, 2016, International Union President Gerard informed Seal that an Administratorship had been established over the affairs and property of the Local Union. In that letter, Gerard stated:

> This action is being taken, in the best interest of the USW, because there is reason to believe that it is necessary to assure the performance of the collective bargaining agreement and other duties of a bargaining representative and to otherwise carry out the legitimate objects of the International Union and the Local Union.
>
> Staff Representative James Watt has been appointed Administrator. You are instructed to turn over to him all books, records, property and effects of the Local Union that are in your possession or control. There will be a hearing and investigation conducted by an International Commissioner, which will notify you of the date, time and place of its hearing. Please feel free to attend that hearing or to provide any written comments you have to the Commissioner.
> (GC Exh. 21)

In an email to Seal the following day, Watt informed him that he received the above-mentioned letter, and that "[w]ith the recent actions of the DOL confiscation of your records, the unpaid taxes and penalties due, and failure to recognize the ratification of the CBA, the Director has requested the [Local Union] 53G be placed back into administratorship." (GC Exh. 20; Tr. 136.)

Goldberg testified that on December 20, 2016, he received a phone call from Watt. In that conversation, Watt informed Goldberg that he had a signed contract and that he was placing the Local Union under "administratorship." (Tr. 55.) Watt also told him that after placing the Local under administratorship he was "going to sign the contract on behalf of the [L]ocal," and that the International was "in control of the ratification process" and that "the Local has no say in it." (Tr. 55.) Watt likewise testified that on December 20, he told Goldberg that the International was placing the Local under administratorship and that he would sign the contract on behalf of the Local Union. (Tr. 140.) On December 20, Plant Director Lackovic and Good also issued a memorandum to the Charloroi hourly employees on "Changes to the Charleroi Contract," which informed the employees that the contract was ratified on November 10, 2016, and it highlighted some of the significant changes that would affect the employees. (GC Exh. 18; Tr. 114–115.)

Watt was the administrator of the Local from December 15, 2016, to approximately January 1, 2017, and in the operation of the financial affairs, he had authority to act on behalf of the Local. Thus, even though he testified that he had authority to act on behalf of the Local to sign the contract that was proposed by Goldberg, he did not sign it on behalf of the Local Union during the time that he was its Administrator. (Tr. 166–167.)

11. On December 22, 2016, the Local Union, informed the Employer that no collective-bargaining agreement had been reached by the parties

On December 22, 2016, 2 days after Watt informed the Employer that he had a signed agreement, Seal informed the Employer by letter that Local 53G "still maintains the contract has not been ratified by the majority of the membership…" and "[t]o remedy this, a revote must occur, as we still maintain a tri-party collective bargaining agreement and due to past practice as per the glass merger agreement." (RL Exh. 9; Tr. 186–187.) The Local also provided a notice to the employees that there was no collective-bargaining agreement reached. (RL Exh. 10; Tr. 188.)

In December 2016, Ornut had a conversation with McAuliffe concerning the tie vote and the ratification issue. Ornut explained to McAuliffe that the contract was a tri-party agreement between the Employer, International Union, and the Local Union, and therefore the International Union could not sign it on behalf of the Local Union—the Local Union had to sign it. (Tr. 155–156.) Thereafter, the Employer attempted to have the International Union sign the contract. However, both the International and the Local refused to sign it. Ornut testified that in the history of that plant, the practice was that ratification required 50 percent of the votes, plus 1, and that the International Union can never ratify an agreement for the Local Union. (Tr. 158.)

12. On January 6, 2017, the International and the Local filed an unfair labor practice charge against the Employer alleging that it unilaterally changed monthly contribution rates for future retirees and engaged in bargaining misconduct, which was subsequently dismissed by the Regional Director of Region 6

In a related matter, on January 6, 2017, the International and its Local 53-G filed an unfair labor practice charge against the Employer alleging that it unilaterally changed monthly contribution rates for future retirees and by bargaining table misconduct in violation of Section 8(a)(5) and (1) of the Act. (GC Exh. 12; Tr. 57–58.) After the Region's investigation of that charge, the Regional Director dismissed it, finding that it was "undisputed that membership ratification was not a requirement for the parties to reach a final contract," and that "membership ratification was conducted pursuant to the Union's internal procedures." Id.; (GC Exh. 13; Tr. 59.) The Regional Director determined that "[a]lthough the ratification resulted in a tied vote, the Union's chief negotiator advised all of the parties, including the Employer, that a contract had been ratified." (GC Exh. 13; Tr. 59.)

The Unions appealed the Regional Director's dismissal of that charge. The General Counsel's Office of Appeals denied the appeal, concluding that the evidence did not support a finding that the Employer violated the Act as alleged. In the appeal, the General Counsel found that the evidence showed the parties "never mutually agreed that ratification by Local Union membership was a condition precedent for accepting a final offer," and it also showed that the Local "only notified the Employer of its ratification requirement after all the parties—including the Local Union—signed a tentative agreement, and after the Employer was notified by the Union's chief negotiator that the CBA had been ratified." (GC Exh. 14.)[8]

13. On January 19, 2017, the Employer presented the tentative collective-bargaining agreement to the International and requested that the officials sign it, but the International refused

In an email dated January 19, 2017, Goldberg asked Ratica to "process the signatures from the International and the Local Union." (GC Exh. 15; Tr. 61.) Ratica never responded to that email. (Tr. 61) In addition, Goldberg sent an email dated January 26, 2017, to McAuliffe regarding "Discussion about Charleroi." (RI Exh. 5; Tr. 88–90.) In that email, Goldberg discussed with

[8] The determination of the General Counsel's Office of Appeals in this case is not binding and has no precedential value. Therefore, it has not been relied upon in reaching my findings and conclusions.

McAuliffe the Local Union Committee's complaint regarding the tentative agreement's issue regarding retiree health insurance. In that email, Goldberg stated:

> We have all been down this road before where the committee got the International riled up against us and I proved their claims to be knowingly false. This is another example. They are engaging in very self-destructive behavior and we (USW and Company) need to save them from them themselves….
>
> It is not appropriate or even lawful to refuse to sign a ratified CBA. As you know, I have a letter establishing that the International believes the CBA has been ratified and I have been told that by Jim Watt and promised by you and others that the CBA would be signed….
>
> In return for the ratified CBA, we made promises on capital projects for the plant. These projects included a tank rebuild and a decorating machine. The Board meets on January 31. Part of that meeting will be a vote on whether to approve those projects. We are prepared to keep our promise, but we need the USW to do the same. The Board is prepared to reject the capital improvement projects. Rejecting either project is bad for job security. Again, we desire to make the capital improvements, but are entitled to the labor peace we were guaranteed through the USW International's promise to sign the CBA….
>
> I think it best for a meeting with the International Union leadership since I am under the impression that the order not to sign the CBA has come from the top of the organization." (RI Exh. 5; Tr. 59.)

Goldberg testified that he got that "impression" from Ratica, who conveyed to him at some time in January 2017, that Leo Gerard, the President of the United Steelworkers International Union, told him not to sign the contract. (Tr. 89–90.)

In an email dated February 9, 2017, from Ratica to International representatives McAuliffe and Watt, International attorney Kilbert, and Tom Conway, Ratica stated: "I had a long conversation with Andy Goldberg today. I told him that he does not have an agreement because this [is] a tri-party agreement and the Local refuses to sign it." (RI Exh. 8) In a letter dated March 15, 2017, the International requested that the Employer return to the bargaining table to work out an agreement. In that letter to Goldberg, Ratica stated that he had "requested many times to return to the table, and you the Company [sic] out right refused. Again, I am making a formal request to return to the table to resolve these outstanding issues." (RI Exh. 6; Tr. 91.)

In April 2017, Ratica called Goldberg and asked to meet for settlement discussions with the Local Union. (Tr. 62.) Goldberg conveyed to Ratica that such discussions were subject to certain conditions, such as the Unions had to agree that there was a contract and that Goldberg was not engaged in bargaining. (Tr. 62–63.) Goldberg testified that Ratica was receptive and he said he would present that to the Local. (Tr. 63.)

14. On May 2, 2017, the Employer requested again that the Respondents sign the collective-bargaining agreement, but they still refused

In an email dated May 2, 2017, from Goldberg to Ratica and McAuliffe (and copying the Local Union officials), Goldberg, referencing the fact that the General Counsel dismissed the unfair labor practice allegations against the Employer, asked that the International and Local both sign the "ratified" collective-bargaining agreement. (GC Exh. 16; Tr. 63–65.) Goldberg attached a copy of the contact, which was the same as the previous contracts he provided the Unions, except this copy contained corrected typos.[9] (GC Exh. 10 and 15; Tr. 63–65.)

In a letter dated May 3, 2017, Ratica responded to Goldberg's May 2nd email by stating that he did not agree to sign the tentative agreement, and there was no contract. (GC Exh. 17; Tr. 66.) In that letter, Ratica informed Goldberg that ". . .one of the elements of our agreement was the Company's promise to locate the decorating line at our Charleroi facility . . . .[b]ut you have told me that the decorating line has already been installed at another facility." Ratica further stated, "So, to the extent that a contract exists, the Company is very seriously in breach of it." (GC Exh. 17.) Despite being presented with the tentative agreement on January 19 and May 2, 2017, neither the International Union or the Local Union officials signed it. McAuliffe testified that the International has not signed the contract because they did not have a contract since it takes all three parties to reach an agreement. (Tr. 209.)

There were no further communications between the Employer and the Unions after May 3, 2017, and the decorating line was not installed in the Charleroi plant. Instead, it was installed in the Employer's facility in Corning, New York (which is also represented by the Union). (Tr. 66–67.)

B. The Contentions of the Parties

1. The General Counsel and the Employer positions

The General Counsel asserts that Respondents violated the Act by their refusal to execute the contract, and that Respondents were obligated to execute the contract when they agreed to its terms on November 2 because results of the ratification vote on November 10—regardless of the vote tally—should not relieve Respondents of their obligations. The General Counsel points out that "the parties never agreed that ratification was a condition precedent to being bound by the tentative agreement" because there was no clear evidence of any such agreement by the Local Union. (GC Br. 13.) The General Counsel argues that applying the principles of agency status, "neither the International nor Local 53G limited Watt's authority and thereby reserved to either the right to reject the tentative agreement through a failed ratification vote." (GC Br. 16.) Finally, the General Counsel argues that even if ratification was a condition precedent, the results of the ratification vote and fact that the International made many affirmations that the contract had been ratified, is evidence that Respondent's violated the Act. (GC Br. 20.)

The Employer acknowledges that "[t]he International, the Local and World Kitchen have been parties to a three-party collective-bargaining agreement for a number of years." (ER Br. 2.) However, like the General Counsel, it argues that Respondents were obligated to execute the

[9] Goldberg testified that the typo he corrected was a chart summary of the terms of the healthcare plan design (Exh. P of that document). (GC Exh. 22, p. 48; Tr. 75.)

tentative agreement because ratification was not a condition precedent to reaching an agreement since there was no document reflecting that fact, and the International repeatedly indicated there was an enforceable agreement. (ER Br. 8–9.) The Employer further argues that even if "ratification was a necessary condition to reaching an agreement," that condition "was satisfied when the Agreement was ratified via the tie vote" based on the fact that Watt told the Employer it was ratified. (ER Br. 12.)

2. The Respondents' positions

The Local Union argues that ratification was required for a final agreement, and since the Local did not ratify the tentative agreement, it was not obligated to sign it. (RL Br. 14.) According to the Local, the history of the requirement of local union membership contract ratification was preserved through a history of mergers of several unions, culminating in a merger into the USW International. The Local contends that the Employer was aware of the ratification requirement and even referenced it in several documents, and it was aware that the prior membership vote on the tentative agreement had been rejected. The Local also argues that the International did not have the authority to bind the Local to the labor agreement without proper ratification. (RL Br. 17.) Since both the International and Local independently were required to sign the contract, and the International was not an agent of the Local for purposes of contract ratification and signing, the International should not be allowed to sign the agreement on the Local's behalf. Finally, the Local alleges that the final agreement did not contain the entire agreement of the parties, asserting that there were discussions that occurred during bargaining that if the agreement was ratified, the Employer would put a new decorating line in the facility, and those "promises were not contained in either the tentative agreements . . . or the document(s) that Goldberg demanded that [the Respondents] sign." (RL Br. 20.)

As mentioned above, the International Union originally took the position that the tie vote meant the agreement was ratified, and when the Local refused to accept that determination, it placed the Local Union under Administratorship. The International also informed the Employer that it would not only sign the contract itself, but it would also execute the contract on the Local's behalf. However, in January 2017, the International changed its position, determining that the contract was not properly ratified and it refused to sign it. Like the Local Union, the International now asserts that ratification was a condition precedent to achieving a final labor agreement, and as such, it was not under any enforceable obligation to execute the contract prior to ratification. Contrary to its earlier assertions, it now argues in its post-hearing brief that it did not have the authority to bind the Local to the agreement or to interpret the tie-ratification vote on the Local's behalf. (RI Br. 19.) Finally, the International, like the Local, claims that the agreement the Employer asked the parties to sign did not accurately reflect the parties' entire agreement. (RI Br. 23.)

C. Analysis

1. The legal principles

Section 8(d) of the Act provides that to bargain collectively is "the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect wages, hours, and other terms and conditions of

employment. . . ." Importantly, "Section 8(d) of the Act requires that the parties in a collective bargaining relationship, once an agreement is reached, to execute that agreement at the request of either party." *Teamsters Local No. 771 (Ready-Mixed Concrete)*, 357 NLRB 2203, 2207 (2011). That obligation is implemented in Section 8(b)(3) of the Act which makes it an unfair labor practice for a union to refuse an employer's request to sign a negotiated agreement. Id.; See *Graphic Communications Union District 2 (Riverwood International USA)*, 318 NLRB 983, 990 (1995). This obligation only arises if the parties have a "meeting of the minds" on all substantive issues and material terms of the agreement. See *Sunrise Nursing Home*, 325 NLRB 380, 389 (1998). Thus, it is well established that "a union refuses to bargain collectively with an employer in violation of 8(b)(3) of the Act when it refuses to execute a written collective-bargaining agreement reached with that employer, which incorporates all the terms of their agreement." *International Brotherhood of Teamsters, Local No. 589 and Jennings Distribution, Inc.*, 349 NLRB 124 (2007); See *H.J. Heinz Co. v. NLRB*, 311 U.S. 514, 525–526 (1941).

2. The parties agreed to the terms of a final and binding collective-bargaining agreement as of November 2, 2016.

As mentioned above, it is well settled that when parties have reached an agreement concerning terms and conditions of employment, one party's refusal to reduce to writing and to sign the agreed-upon contract violates the Act. *Newtown Corp.,* 280 NLRB 350 (1986), enfd. per curiam 819 F.2d 677 (6th Cir. 1987); *H.J. Heinz Co. v. NLRB*, 311 U.S. 514 (1941); *K Mart Corp.*, 238 NLRB 1173, 1179 (1978). In this case, there is no dispute that on November 2, 2016, the International, the Local, and the Employer agreed to all outstanding issues and material terms of an agreement, and an enforceable collective-bargaining agreement was reached. All three parties were therefore required to sign and execute that agreement. However, both the International and the Local acknowledge that they refused to execute the written document presented by the Employer on the basis that they were not obligated to do so because the tie vote was not ratification of the tentative agreement.

This case presents a somewhat unusual situation. While the International Union and the Local Union jointly serve as the bargaining representative of the unit employees in the three-party agreement that must be executed by both the International and Local representatives, it is undisputed that International Representative Watt served as the lead negotiator for both Unions in the negotiations. After the tie ratification vote, Watt clearly and undisputedly informed the Employer that the parties had a ratified contract. However, while the Local neglected to contradict the International's determination, several days later it belatedly asserted that the agreement was not ratified because it was not approved by a majority of the members. While seemingly at odds with each other, the International attempted to convince the Local that the agreement was ratified, and when the Local persisted in opposing the International's position, the International placed the Local under Administratorship, thereby taking control of its business dealings and conveying to the Employer that it had not only signed the contract, but that it would also execute the contract on behalf of the Local.

The International, however, never presented a signed agreement to the Employer, and it never signed the agreement for the Local when it had the opportunity to do so. Instead, the International subsequently changed its position and joined the Local in asserting that the agreement was not properly ratified. Thereafter, both Respondents refused to sign the contract based upon

an allegedly failed ratification vote, a precondition or condition precedent to finalizing a contract to which they had agreed to its terms. In short, despite the International's many assurances to the Employer that the contract was ratified by the members, the International and the Local are now defending their refusals to execute the contract based upon an allegedly failed ratification process or vote. For the reasons set forth below, the Respondent's arguments, and the premises upon which they are based, are without merit.

3. Ratification was not a condition precedent and was not necessary in order to have a final and binding collective-bargaining agreement

While this case presents a somewhat unusual situation, the issue of whether ratification is necessary to have a final and binding labor agreement is not unprecedented. As a general principle, nothing in the National Labor Relations Act imposes an obligation on the statutory bargaining agents of a union to obtain ratification by employees in the bargaining unit before a final and binding agreement occurs. *North Country Motors Limited*, 146 NLRB 671, 674 (1964). Instead, as a general proposition, "when an agent is appointed to negotiate a collective-bargaining agreement, that agent is deemed to have apparent authority to bind his principle in the absence of clear notice to the contrary." *Teamsters Local 662 (W.S. Darley & Co.)*, 339 NLRB 893, 898 (2003); citing *University of Bridgeport*, 229 NLRB 1074, 1074 (1977). Thus, employee ratification of contracts is not a condition precedent for the formation of final and binding collective-bargaining contracts under the Act. In fact, the Board and the courts have long held that neither employers nor unions can insist, as a condition precedent or precondition to reaching agreement on a contract, that the other party's principal must ratify the agreement reached during negotiations by the parties' bargaining agents. Not only is employee ratification not required under the Act, the imposition of it over the objections of a bargaining agent would undermine the collective-bargaining system contemplated under the Act. Such a determination by the Board has not been lightly made. Instead, it is firmly established in the language of the Act and in its policies underlying its implementation.

Initially, it is important to note that negotiations concerning employee ratification of contracts are not contemplated by the bargaining obligation imposed by the Act. While Section 8(d) of the Act mandates that employers and labor organizations "confer in good faith with respect to wages, hours, and other terms and conditions of employment," ratification is "unrelated to wages and terms and conditions of employment." *C & W Lektra Bat Co*., 209 NLRB 1038, 1039 (1974), enfd. 513 F.2d 200 (6th Cir. 1975). Ratification is therefore not a mandatory subject of bargaining within the meaning of Section 8(d) of the Act. *Houchen Market of Elizabethtown, Inc*., 155 NLRB 729, 730 (1965), enfd. 375 F.2d 208 (6th Cir. 1967). The Board and the courts have thus held that the Act imposes no obligation upon bargaining representatives to obtain employee ratification of contracts they negotiated on the employees' behalf, and that allowing an employer to insist upon employee ratification to impasse would undermine the exclusivity the Act provides to bargaining representatives. Under Section 9(a) of the Act, bargaining representatives are "the exclusive representatives of all the employees in such [appropriate] unit[s] for" collective-bargaining purposes. This reflects the Act's "preference for channeling disagreements over these core topics [wages, hours, and other terms and conditions of employment] into collective bargaining to promote 'industrial peace' and minimize the economic impact of labor strife on interstate commerce." *Retlaw Broadcasting Co. v. NLRB*, 172 F.3d 660, 665 (9th Cir. 1999).

The Board and the courts have also found that "employee ratification marginally diminishes the statutory rights that Congress has bestowed on unions as exclusive bargaining representatives both in the negotiation of labor contracts and in the governance of internal affairs. . . . " *New Process Steel LP*, 353 NLRB 111, 114 (2008), incorporated by reference, 355 NLRB 586 (2010). The requirement of employee ratification has been found to inherently "modif[y] the collective bargaining system provided for in the statute by weakening the independence of the 'representative' chosen by the employees. . . " and "[i]t enables the employer, in effect, to deal with its employees rather than with their statutory representative." *NLRB v. Borg-Warner Corp.*, 356 U.S. 342, 350 (1958). Thus, under the Act, employee-ratification is not a condition precedent for formation of final and binding agreement on terms for a collective-bargaining contract." *Teamsters Local 662 (W.S. Darley & Co.)*, 339 NLRB 893, 898 (2003).

Unless a union and an employer have agreed otherwise, ratification of labor agreements is an internal union matter. *Martin Barry Co*., 241 NLRB 1011, 1013 (1979); *New Process Steel*, 353 NLRB No. 13, p. 114 (2008). As such, "internal union matters cannot effect [sic] the validity of collective bargaining agreements." *Newtown Corp*. 280 NLRB 350, 351 (1986), enfd. 819 F.2d 677 (6th Cir. 1987). Plainly put, the Board has held that "it is none of the [e]mployer's business how (or even whether) the [union] obtains the employees' approval of the [e]mployer's offer," and that "if a union undertakes to submit a contract proposal to a vote of its members, it is for the union, and not the employer, to construe the meaning of the union's internal requirements for ratification." *Teamsters Local 251 (McLaughlin & Moran)*, 299 NLRB 30, 32 (1990); *M & M Oldsmobile*, 156 NLRB 903 (1966), enfd. 377 F.2d 712 (2nd Cir. 1967). As the Board held in *Martin J. Barry Co.*, 241 NLRB 1011, 1013 (1979):

> It is well settled that ratification is an internal union matter which is not subject to question by an employer. Here, there was a meeting at which a vote was taken, and the Union concluded that the meeting and vote met its standards for a valid ratification vote…. [The Employer] may not raise questions concerning the Union's internal procedures in order to avoid its obligation to sign the agreed-upon contract. For this reason, it is unnecessary and inappropriate for us to consider whether, in fact, the procedure followed by the Union was consistent with its normal ratification procedure.

Thus, because ratification is an internal union matter or procedure, an employer "may not lawfully refuse to sign a contract on the basis of the union's ratification procedures were not in accordance with the requirements of its constitution and bylaws [citations omitted], or that the ratification vote was tainted by procedural defects [citations omitted], or even that the union coerced its members into voting for ratification. . . ." *Teamsters Local 251 (McLaughlin & Moran)*, 299 NLRB 30, 32 (1990). That same rationale applies to unions that refuse to execute labor agreements on the basis of their internal procedures of ratification.

4. While parties may reach an agreement that ratification is a condition precedent to finalizing a contract, no such agreement occurred in this case

Despite these well-established principles pertaining to employee ratification of labor agreements, and the statutory and policy considerations underlying them, like other non-mandatory or permissive subjects of bargaining, unions and employers are free under the Act to bargain about

employee ratification, and even reach agreements making it a precondition or condition precedent to finalizing a collective-bargaining agreement. In situations where the parties agree to ratification as a precondition to finalizing the agreement, they are under no enforceable obligation to execute the written contract prior to ratification, and they may lawfully refuse to execute a written contract until that employee ratification condition is satisfied. *Hertz Corp.*, 304 NLRB 469, 469 (1991); See *Beatrice/Hunt-Wesson*, 302 NLRB 234, fn.1 (1991).

Given the above-mentioned statutory and policy considerations however, such agreements for employee ratification are not easily established. In this connection, the Board has recognized a distinction between a union's self-imposed limitation or "gratuitous ratification" established by unions on their authority to reach final and binding agreements, and the actual agreement that ratification must be a condition precedent to finalizing a labor agreement. In *Williamhouse-Regency of Delaware*, 297 NRLB 199 fn. 5 (1989), the Board held that "[w]hen a union…limits its own authority to enter into a binding agreement. . . by imposing on itself the requirement that it's [sic] membership ratify the agreement, that requirement does not constitute a condition precedent." Rather, it signifies only that "rights and duties under any agreement reached would not become effective until ratified by the employees." *Teamsters Local 662 (W.S. Darley & Co.)*, 339 NLRB 893, 898–899 (2003); *Tri-Produce Co.*, 300 NLRB 974 fn. 2 (1990); See also *Sacramento Union*, 296 NLRB 477 (1989). "In other words, voluntarily-imposed employee-ratification requirements do not pertain to the agreement portion of Section 8(d) of the Act, but rather pertain to the duties of execution and honoring the terms of agreement, separately imposed by Section 8(d) of the Act." *Teamsters Local 662 (W.S. Darley & Co.)*, 339 NLRB 893, 899 (2003).

The distinction between a union's self-imposed limitation on its authority to reach final and binding agreements, and the actual agreement that ratification must be a condition precedent to finalizing a labor agreement lies at the core of the overall statutory bargaining obligation. It has been described as:

> "[O]ne that balances statutory concern with encouraging collective bargaining as a means for mitigating and eliminating obstructions to the free flow of commerce, as set forth in Section 1 of the Act, against allowance of democratic participation by employees in the collective-bargaining process. That is, it allows employees to participate more fully in the collective-bargaining process, without compromising unduly the basis principle that 'the employer's statutory obligation is to deal with employees through the union, and not with the union through the employees.'" *Teamsters Local 662 (W.S. Darley & Co.)*, 339 NLRB 893, 899 (2003); *General Iron Works Co.*, 150 NLRB 190, 195 (1964), quoted with approval in *NLRB v. Triple A Fire Protection, Inc.*, 136 F.3d 727, 735 (11th Cir. 1998).

The distinction between a self-imposed union limitation on its authority and an actual agreement that ratification is a condition precedent has been found to preserve the employee's ability to participate in the process that leads to agreements governing their terms and conditions of employment, and at the same time it preserves those agreements from challenges based on "misunderstandings and cross currents," and possible "protracted litigation" arising from ratification elections. *Teamsters Local 662 (W.S. Darley & Co.)*, 339 NLRB 893, 899 (2003). However, that distinction imposes "an obligation on labor organizations conducting ratification

elections where… such elections are not agreed-upon conditions precedent for formation of final and binding contracts. Id. The Board has explained that means:

> [W]henever [a] labor organization gives notice to an employer that their agreement has been ratified by the employees, that notice signifies acceptance of the rights and duties arising under that agreement and, in turn, the statutory obligation arises to execute a written contract embodying that agreement. That result is necessary to fully implement the statutory obligation to execute written contracts, while allowing employees to participate in the bargaining process through ratification elections. Id. *Teamsters Local 251 (McLaughlin & Moran)*, 299 NLRB 30, 32 (1990).

The Board has likewise held that an employer's awareness of "improprieties in ratification elections, failure of a majority of employees to vote in favor of ratification and, even, failure to conduct such a ratification election at all, do not suffice to justify refusals to execute contracts embodying agreements reached, once bargaining representatives give notice that ratification has occurred. Id. at 899; See *Newtown Corp.*, 280 NLRB 350, 351 (1986), enfd. per curiam 819 F.2d 677 (6th Cir. 1987). "The same considerations warrant the conclusion that once they give notice to employers that ratification has occurred, labor organizations may not, under the Act, brandish deficiencies in ratification elections as escape mechanisms for refusals to execute contracts embodying their agreements." *Teamsters Local 662 (W.S. Darley & Co.)*, 339 NLRB 893, 899 (2003).

Thus, in determining whether ratification is a condition precedent, the Board "require[s] more specific proof than [conclusionary testimony about a union's expression of intent to seek membership approval of any agreement reached] to make ratification a condition precedent to a collective-bargaining agreement." *C & W Lektra Bat Co.*, 209 NLRB 1038, 1039 (1974), enfd. 513 F.2d 200 (6th Cir. 1975). The Board has held that for employee ratification to be a condition precedent or precondition for formation of a labor agreement, the employer must be "aware before or during negotiations of such a condition precedent, and [have] expressly agreed to it." *Teamsters Local 589 (Jennings Distribution)*, 349 NLRB 124 (2007). Importantly, the Board requires that there be clear evidence of any such agreement by a union. *New Process Steel LP*, 353 NLRB 111, 114 (2008), incorporated by reference, 355 NLRB 586 (2010). Clear evidence is necessary because when employee ratification is made a condition precedent, a union effectively agrees to devolve its exclusive collective representation to the employees. "[E]mployee ratification marginally diminishes the statutory rights that Congress has bestowed on union as exclusive bargaining representatives both in the negotiation of labor contracts and in the governance of internal affairs . . . [thus] it is entirely fitting that the Board insist on clear evidence that a union has agreed as a contractual matter to surrender a degree of its prerogatives." *New Process Steel*, supra at 114, quoting *Beatrice/Hunt-Wesson, Inc*., 302 NLRB 224, 226 (1991).

In the instant case, the record is devoid of any clear evidence that the parties expressly agreed that employee ratification was a condition precedent to bind them to the tentative agreement that the Employer's lead negotiator (Goldberg) and the Respondents' lead negotiator (Watt), with the concurrence of the Local Negotiating Committee, had negotiated on November 2, 2016. There was no testimony from any witnesses asserting that the parties expressly agreed that ratification was a condition precedent to reaching an agreement. In fact, the Respondents acknowledge there

was no agreement with the Employer that employee ratification would be a condition precedent for the formation of a final and binding agreement. There were likewise no written documents or any mention in the tentative agreements establishing that the parties expressly agreed that employee ratification must occur before the agreement could become binding.

There is however, evidence that Goldberg made mention of the contract being ratified in statements and in emails, and there is no question that he was aware that the Union intended to have the tentative agreement ratified by the employees on November 10, 2016. In fact, the record is clear that the Local previously presented an earlier tentative agreement to the membership for ratification in August of 2016, and it was voted down. Thus, the record reveals that Goldberg was aware that there would be a ratification vote on the tentative agreement they reached on November 2, 2016, and that it was the practice of the Local to have tentative agreements ratified by its members. The issue, however, is not whether the Employer knew that the Local would hold a ratification vote or whether it was the Local's general practice to do so, but instead, whether the parties had expressly agreed that ratification was a condition precedent to reaching a binding agreement. I find, consistent with established Board law, that the mere knowledge of an impending vote and/or knowledge that ratification was a practice of the Local, fails to establish the requisite clear evidence of an actual bilateral agreement among the parties.

In *Personal Optics*, 342 NLRB 958, 962 (2004), the Board affirmed an Administrative Law Judge's finding that an employer unlawfully refused to execute an agreement despite its contention that the employees had not ratified the employer's final offer. Although the final offer specifically made a wage increase effective on the date after ratification occurred and provided that employees would receive a bonus following ratification, the judge concluded that such references did not constitute clear evidence that the parties made a bilateral agreement that ratification was a condition precedent. In that case, the Board found that "even if the Union's prior statements arguably may have led the Respondent [therein] to believe that the Union would conduct a vote of the bargaining unit, there was never any such agreement between the parties. Accordingly, the Board agreed with the judge that the Union's acceptance of the offer created a binding collective-bargaining agreement. Id. at 958, fn 2. Thus, employer knowledge that the union would present the agreement to employees for ratification, and more specifically, the fact that there was an actual reference to ratification in a proposed contract, without the parties having actually agreed to such a requirement, is insufficient to establish the existence of a condition precedent.

Likewise, even though the evidence in the instant case shows that the Local's practice or internal union procedure was to submit tentative agreements to the membership for a vote, that fact is not determinative of the issue of ratification being essential for finalization of a contract. When a union follows a self-imposed or gratuitous practice of "obtaining ratification of any contract it may negotiate on behalf of its members," then "it is for the union, not the employer, to construe and apply" that practice. *M & M Oldsmobile, Inc.*, supra. The evidence in this case thus establishes that the ratification limitation made by the Respondents on their authority to reach a final agreement was self-imposed or gratuitous, and not a condition precedent to reaching a final and binding agreement. Accordingly, the Respondents were obligated to execute the document that embodied that agreement.

5. Watt's assertion as bargaining agent for the Respondents that the contract was ratified was binding, and even if ratification was a condition precedent, the Respondents were obligated to execute the contract agreed upon.

Although the Local followed a self-imposed practice of submitting agreements to unit employees for ratification elections on their terms, the Respondents' lead negotiator, Watt, as an agent of the employees' exclusive collective-bargaining representative within the meaning of Section 9(a) of the Act, possessed full authority to finalize the agreement without ratification by a majority of the employees. It is well established Board law that an agent, such as Watt, appointed to negotiate a collective-bargaining agreement on behalf of both the International and the Local, as the bargaining representative of the employees, is deemed to have full authority to bind his principal, in this case the Respondents, in the absence of notice to the contrary. *University of Bridgeport*, 229 NLRB 1074, 1074 (1977). Any such notice to the contrary must be affirmative, clear, and timely. Id. at 1082; See also *Teamsters Local 589 (Jennings Distribution)*, 349 NLRB 124 (2007). In addition, "if such announcement [of a limitation of authority] is not made, then the principal must bear the responsibility for the consequences of any misunderstandings that might arise." *University of Bridgeport*, supra at 1082.

In this case, applying the principles of agency status, neither the International nor the Local limited Watt's authority to make a final and binding agreement, thereby reserving to either of them the right to reject the tentative agreement through a failed ratification vote. There is also no evidence that the Respondents ever provided affirmative, clear, and timely notice to the Employer, either before or during the negotiations, that Watt lacked full authority to bind the Respondents to the agreement, or that they limited Watt's authority by reserving the right to have employees approve or reject a tentative agreement. In addition, although Goldberg viewed the signing of tentative agreements by all members of the bargaining committees as important, there is no evidence that their signatures on the tentative agreements detracted from the apparent and real authority Respondents vested in Watt. Instead, the evidence clearly establishes that as of November 10, 2016, Watt, on behalf of the Respondents, officially informed the Employer that the employees had ratified the contract. Once that occurred, it made no difference what the Respondents, either individually or collectively, subsequently decided about the correctness of the ratification vote. As mentioned above, it is the Unions that construe their internal regulations relating to ratification, and once Respondents notified the Employer that the contact was ratified, the Respondents cannot thereafter lawfully change their position and refuse to execute the contract on the basis that the ratification was for some reason allegedly improper. *Teamsters Local 589 (Jennings Distribution)*, supra at 124; *Teamsters Local 662 (W.S. Darley & Co.)*, 339 NLRB 893, 899 (2003). Yet, that is exactly what the Respondents are attempting to do in this case.

Thus, I find that when the Respondents' bargaining representative gave the Employer notice that the contract was ratified, that signified acceptance of the rights and duties arising under that agreement and, in turn, the statutory obligation to execute the written contract embodying that agreement arose. Furthermore, even if the parties had expressly agreed that ratification was a necessary condition to reaching a contract, which they had not, that condition was satisfied when Watt informed the Employer that the tentative agreement was ratified by the tie vote. The history of the merger agreements between the Local and the International and the rights of the Local that existed pertaining to ratification of labor agreements are internal union matters that are not

relevant, and have no effect on whether the parties agreed on a final and binding collective-bargaining agreement.

Additionally, the fact that the International Union may have somehow made a mistake in determining that the tie vote constituted ratification of the agreement is an insufficient basis to refuse to sign the agreement that the parties reached. In this connection, the Board has held that "it would not serve the statutory purpose of encouraging collective bargaining to allow unions to avoid their contracts on the ground that they had failed to follow their own internal procedures," and "that the [union] may have mistakenly followed the wrong procedures does not absolve it from being bound by the representations [the union's representative] made to the [employer's representative] when [that employer representative] had no way of knowing or even suspecting that a mistake may have been made." *Teamsters Local 251 (McLaughlin & Moran)*, 299 NLRB 30, 32 (1990).

Thus, ratification was not a condition precedent either through the express agreement of the parties or through the Respondents limiting the authority of Watt to reach a final and binding agreement, and even if it was a condition precedent, that condition was satisfied when Watt informed the Employer that the contract was ratified. Accordingly, the Respondents' refusal to execute the contract embodying the terms of the agreement reached by the parties violated Section 8(b)(3) of the Act.

6. The document that the Employer presented to the Respondents to sign was the complete agreement of the parties, and the Respondents' failure and refusal to sign the contract violated the Act.

The Respondents' contend that the Employer demanded that they execute a written contract document which failed to contain the entire agreement of the parties. (RL Br. 19–20; RI Br. 22–23.) They allege that the final agreement did not contain discussions that occurred during bargaining that if the agreement was ratified, the Employer would put a new decorating line in the facility, and that Local President Seal told the unit members that they would get the decorating line if they ratified the contract. On that basis, the Local argues that those "promises were not contained in either the tentative agreements . . . or the document(s) that Goldberg demanded that [the Respondents] sign." (RL Br. 20.)

In this argument, the Respondents reference the fact that the Employer conveyed it's desired to install a new decorating line which would bring in additional production to one of its plants, but that it wanted to install that line in a facility with stable labor relations in the form of an agreed upon labor agreement. (Tr. 173–174; RL Exh. 4.) Goldberg also stated in an email to Watt that "In return for the ratified CBA, we made promises on capital projects for the plant. These projects included a tank rebuild and a decorating line." (RI Exh. 5.) The Respondents argue that by conveying its intent to place a decorating line in the Charleroi facility, that matter was bargained over and agreed to by the parties, and it should have been in the written agreement presented for signature. I find these allegations are meritless.

While the Employer did inform the Respondents of its desire to place the new decorating line in the Charleroi facility if a contract was reached, that was simply an expression of intent by the Employer, informing them of one of the intended results of reaching an agreement. The

evidence does not establish that such intent was a proposed term of the contract and there is no evidence that the parties made that a subject of bargaining. There is also no evidence of a meeting of the minds on that subject, and there is no evidence that such a decision was anyone's other than the Employer's. The evidence likewise failed to establish that such expression of intent constituted a verbal agreement or some kind of side-agreement by the parties, or that it should be included in the contact. In addition, the Respondents' contentions in this matter are belied by the fact that such a subject was not included in the terms agreed upon and there is no mention of it in the parties' tentative agreements. I find that the Employer's statements on the decorating line were nothing more than an expression of its intent, not an agreement presented during bargaining and mutually agreed to with a meeting of the minds.

However, even assuming that the Employer's statements somehow constituted an oral agreement, a rule of substantive law, which when applicable defines the limits of a contract, would preclude such statements from changing or modifying the clear and unambiguous agreement that was negotiated by the parties. In this connection, under the parol-evidence rule a written agreement may not be changed or modified by any oral statements or arguments made by the parties in relation with the negotiation of the agreement. A written collective-bargaining agreement consummating previous oral and written negotiations is deemed, under the rule, to embrace the entire agreement, and, if that writing is clear and unambiguous, parol-evidence will not be allowed to vary the contract.[10] The written agreement in this case is clear and unambiguous, and it embraces the entire agreement. Such evidence of an oral agreement thus cannot modify the agreement.

Consistent with the foregoing, I further find that the Respondents' assertion on this subject is not supported by the fact that the parties specifically agreed that their clear and unambiguous agreement could not be added to or modified, which is precisely what they are attempting to do in this case. In article 4, section 1 of the agreement, step 6 of the grievance procedure expressly provides that an "arbitrator… shall have no power to add to, subtract, or modify any of the provisions of this contract. . . . " (GC Exh. 2.) Thus, I find no merit to the Respondents' argument which attempts to place statements about the Employer's intent into the contract.

Accordingly, I find that the General Counsel has met its burden of showing that the document, which Employer presented and the Respondents refused to execute, accurately reflected the agreement of the parties. See *Polycon Indus., Inc*., 363 NLRB No. 31, slip op. at 7 (2015).

7. Conclusion

It is undisputed that the burden of proof is on the party alleging the existence of a contract. *Cherry Valley Apartments*, 292 NLRB 38 (1988). Based on the above facts, well-established case law, and analysis, I find that the General Counsel has met his burden of proof by a preponderance of the evidence. As such, I find that on November 10, 2016, with the Employer being informed that the union members in the bargaining unit had ratified the tentative agreement reached by the parties on November 2, 2016, the parties reached complete agreement on the terms and conditions of a collective-bargaining agreement. Furthermore, I find that since December 22, 2016, the Employer has requested that the Respondents execute a written contract embodying that

[10] Elkouri & Elkouri, "How Arbitration Works," Fifth Edition, Chapter 10, p. 598.

agreement, and that since that date the Respondents have failed and refused to execute said agreement. Accordingly, I find that by their actions the Respondents have refused to bargain collectively in violation of Section 8(b)(3) of the Act.

CONCLUSIONS OF LAW

1. World Kitchen is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Respondent International Union and Respondent Local Union 53G are labor organizations within the meaning of Section 2(5) of the Act.

3. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All production and maintenance employees including checkers, shippers and truck drivers employed by the Employer at its Charleroi, Pennsylvania, facility; excluding office clerical employees and guards, laboratory workers, technical and engineering employees, and supervisors as defined in the Act.

4. At all times material, the Respondents have been the exclusive collective-bargaining representative of the employees in the unit described above within the meaning of Section 9(a) of the Act.

5. Respondents, by failing to execute the written collective-bargaining agreement embodying the final and binding written agreement reached on the unit employees' terms and conditions of employment on November 2, 2016, and presented by the Employer to the Respondents for signature on or about December 22, 2016, violated Section 8(b)(3) of the Act.

6. The above unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondents have engaged in certain unfair labor practices, I shall recommend that they be ordered to cease and desist therefrom and take certain affirmative actions to effectuate the policies of the Act. With respect to the latter, they shall be ordered to execute, upon request by World Kitchen, LLC, a written contract embodying the entire agreement reached with that employer on November 2, 2016.

On these findings of fact and conclusions of law, and on the entire record, I issue the following recommended:[11]

[11] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

ORDER

The Respondents, United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL–CIO, CLC and its Local 53G and United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, Local 53G, AFL–CIO, CLC and their officers, agents, and representatives, shall

1. Cease and desist from

(a) Failing and refusing to execute a written collective-bargaining agreement embodying all the terms included in the final and binding agreement reached with World Kitchen, LLC on November 2, 2016, as the representatives of all employees in the following appropriate bargaining unit:

> All production and maintenance employees including checkers, shippers and truck drivers employed by the Employer at its Charleroi, Pennsylvania, facility; excluding office clerical employees and guards, laboratory workers, technical and engineering employees, and supervisors as defined in the Act.

(b) In any like or related manner restraining or coercing employees in the exercise of their rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, execute a written collective-bargaining agreement with World Kitchen, LLC that embodies all the terms included in the final and binding agreement reached with that employer on November 2, 2016, for all employees in the appropriate bargaining unit.

(b) Give retroactive effect to the provisions of the collective-bargaining agreement reached with the Employer on November 2, 2016.

(c) Within 14 days after service by the Region, post at its offices, places of business, and meeting places copies of the attached notice marked "Appendix."[12] Copies of the notice, on forms provided by the Regional Director of Region 6, after being signed by the Respondents' authorized representatives, shall be posted by United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO, CLC and its Local 53G and United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, Local 53G, AFL–CIO, CLC and maintained for 60 consecutive days in conspicuous places including all places where notices to employees and members are customarily posted. Reasonable steps shall be taken by the Respondents to ensure that the notices are not altered, defaced, or covered by any other material.

[12] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(d) Sign and return to the Regional Director sufficient copies of the notice for posting by World Kitchen, LLC, if it is willing, at all locations where notices to employees are customarily posted.

(e) Within 21 days after service by the Region, file with the Regional Director sworn certifications or statements of responsible officials of Respondents on forms provided by the Region attesting to the steps they have taken to comply.

Dated, Washington, D.C. January 25, 2019

Thomas M. Randazzo
U.S. Administrative Law Judge

APPENDIX

NOTICE TO MEMBERS

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and abide by this notice.

FEDERAL LAW GIVE YOU THE RIGHT TO

Form, join, or assist a union;
Choose representatives to bargain on your behalf with your employer;
Act together with other employees for your benefit and protection;
Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to sign the written collective-bargaining agreement embodying all the terms included in the final and binding agreement reached with World Kitchen, LLC on November 2, 2016, as the representatives of all employees in the following appropriate bargaining unit:

> All production and maintenance employees including checkers, shippers and truck drivers employed by the Employer at its Charleroi, Pennsylvania, facility; excluding office clerical employees and guards, laboratory workers, technical and engineering employees, and supervisors as defined in the Act.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request by World Kitchen, LLC, immediately sign the written collective-bargaining agreement embodying all the terms included in the final and binding agreement reached with that employer on November 2, 2016.

WE WILL, give retroactive effect to the provisions of the collective-bargaining agreement reached with World Kitchen, LLC on November 2, 2016, and presented by that employer to us for signature on or about December 22, 2016.

UNITED STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS INTERNATIONAL UNION, AFL-CIO, CLC AND ITS LOCAL 53G

Dated: _____ By: _____
(Representative) (Title)

UNITED STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS INTERNATIONAL UNION, LOCAL 53G, AFL-CIO, CLC

Dated: _____ By: _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below or you may call the Board's toll-free number 1-866-667-NLRB (1-866-667-6572). Hearing impaired persons may contact the Agency's TTY service at 1-866-315-NLRB. You may also obtain information from the Board's website: www.nlrb.gov.

William S. Moorhead Federal Building
1000 Liberty Avenue, Room 904
Pittsburgh, PA 15222-4111
(412) 395-4400
Hours: 8:30 a.m. to 5:00 p.m. ET

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/06-CB-198329 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (412) 690-7117.